

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Amendment of Part 20 and 24 of the )  
Commission's Rules -- Broadband )  
PCS Competitive Bidding and the )  
Commercial Mobile Radio Service )  
Spectrum Cap )  
)  
Amendment of the Commission's )  
Cellular PCS Cross-Ownership Rule )

WT Docket No. 96-59

GN Docket No. 90-314

To: The Commission

REPLY COMMENTS

Cook Inlet Region, Inc. ("CIRI"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Reply Comments in response to the above-captioned Notice of Proposed Rule Making ("NPRM"), adopted and released by the Commission on March 20, 1996.

In its Comments, CIRI outlined ways in which the Commission can ensure that its remaining broadband personal communications services ("PCS") auctions are competitive and reliable. In light of the unexpectedly high costs of licenses in the broadband PCS C Block auction, CIRI urged the Commission to examine its preference programs for entrepreneurial companies in general, and for small businesses and businesses owned by member of minority groups in particular, to ensure that they are as effective as possible in opening the Commission's auctions to new bidders. A number of commenters shared CIRI's views.

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## **I. SCOPE OF ENTREPRENEURIAL PREFERENCES**

### **A. Preferences in the D, E, and F Blocks**

Many parties urged the Commission to make its preferences for entrepreneurial companies available to bidders in the D, E, and F Block auctions.<sup>1</sup> Moreover, several commenters demonstrated that installment payment plans alone were insufficient to encourage meaningful small business competition in the unrestricted D and E Block auctions.<sup>2</sup> Rather, as CIRI indicated, installment payment terms are of little use if there is no license for which to pay. If the Commission plans to encourage entrepreneurial entities to participate in each of the remaining broadband PCS auctions, bidding credits for smaller companies should be a principle component of the D, E, and F Block auction rules.

Some larger companies opposed the extension of measures for smaller businesses to the D and E Block auctions. Telephone and

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<sup>1</sup> See, e.g., Comments of Ad Hoc Rural PCS Coalition at 9-10; Airlink, L.L.C. at 11; Antigone Communications Limited Partnership at 7; DCR Communications, Inc. at 10; Devon Mobile Communications, L.P. at 12-13; Gulfstream Communications, Inc. at 3-4; Iowa, L.P. at 2; KMTel, L.L.C. at 6; Mountain Solutions at 7; North Coast Mobile Communications, Inc. at 12; PCS Development Corporation at 8-10; PersonalConnect Communications, L.L.C. at 2-3; Phoenix, L.L.C. at 3; Rendall and Associates at 7, 11; Telephone Electronics Corporation at 12; U.S. Intelco Wireless Communications, Inc. at 6; and Virginia PCS Alliance, L.C. at 6-7.

<sup>2</sup> See, e.g., Comments of Ad Hoc Rural PCS Coalition at 9-10; DCR Communications, Inc. at 10; Gulfstream Communications, Inc. at 3-4; Iowa, L.P. at 2; KMTel, L.L.C. at 6; PCS Development Corporation at 8-10; PersonalConnect Communications, L.L.C. at 2-3; Phoenix, L.L.C. at 3; Rendall and Associates at 7, 11; U.S. Intelco Wireless Communications, Inc. at 6; and Virginia PCS Alliance, L.C. at 6-7.

Data Systems, Inc., for example, argued that the Commission has set aside the C and F Blocks for bidding by entrepreneurial companies and that the measures offered for those auctions should not be made available elsewhere.<sup>3</sup> As PCS Development Corporation noted, however, "The Commission, by channelling small businesses to a limited number of channels, affords larger telecommunications companies an opportunity to acquire more spectrum with substantially less competition."<sup>4</sup> The Commission can substantially increase competition for all broadband PCS licenses by encouraging responsible smaller companies to participate in each of the remaining auctions. To do that, however, the Commission must extend entrepreneurial preferences to each of the unrestricted auctions.

**B. Retain Control Group Equity Options**

CIRI also urged the Commission to utilize its Control Group Minimum 25 and 50.1 Percent Equity Options in the D, E, and F Block auctions. The Commission designed the Control Group Equity Options to facilitate investment in smaller companies that — at first — might not be able to compete against more established telecommunications companies. Some parties argued, however, that the Commission should prohibit investments in entrepreneurial companies by entities that would not qualify as entrepreneurs.<sup>5</sup>

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<sup>3</sup>. Comments of Telephone and Data Systems, Inc. at 8.

<sup>4</sup>. Comments of PCS Development Corporation at 9.

<sup>5</sup>. See, e.g., Comments of Mountain Solutions at 4; National Telephone Cooperative Association at 4; Telephone Electronics Corporation at 9.

Although CIRI supports the efforts of the Commission to see that its auctions are not dominated by large, entrenched telecommunications companies, the Commission's Control Group Equity Options are critical to the ability of entrepreneurial companies to raise capital.<sup>6</sup> In particular, the Commission's Control Group 50.1 Percent Equity Option requires a smaller bidder to retain a substantial equity stake in a broadband PCS venture, thereby promoting responsible bidding while helping to finance license build-out. These equity investment models are critical both in the entrepreneurs' blocks and in the unrestricted D and E Block auctions.

**C. Increase Up Front Payments and Downpayments**

Although CIRI encouraged the Commission to extend measures for entrepreneurial companies in the remaining auctions, CIRI also urged the Commission to increase entrepreneurial upfront payments and downpayments to ensure that the auction results are reliable. Other commenters made similar proposals. AT&T Wireless Services, Inc. suggested raising upfront payments to \$0.10 per MHz per pop,<sup>7</sup> while Airlink, L.L.C. and Go Communications Corporation argued in favor of upfront payments keyed to ultimate bid amounts.<sup>8</sup> Similarly, Sprint Corporation urged the Commission to increase the downpayment for

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<sup>6</sup>. See Comments of Airlink, L.L.C. at 14; Devon Mobile Communications, L.P. at 6-8; Sprint Corporation at 3.

<sup>7</sup>. Comments of AT&T Wireless Services, Inc. at 7-8.

<sup>8</sup>. Comments of Airlink, L.L.C. at 8; Go Communications Corporation at 1.

entrepreneurs to 20 percent of their winning bids<sup>9</sup> and PersonalConnect Communications, L.L.C. suggested a 25 percent requirement.<sup>10</sup> CIRI urges the Commission to raise the upfront payment for entrepreneurs at least to \$0.02 per MHz per pop and to raise the downpayment for entrepreneurs to 30 percent of their winning bids.

## **II. LIMITATIONS ON LARGE C BLOCK WINNERS**

### **A. Restrict Preferences for C Block Bidders That Win Large Amounts of Spectrum**

In its Comments, CIRI urged the Commission to limit the availability of Federally-funded preferences for bidders and investors that win a large amount of spectrum in the C Block auction. These parties are no longer "small," and continuing to offer preferences to them would reduce opportunities for other entrepreneurial bidders and limit the Commission's ability to say that it disseminated licenses among a wide variety of applicants. Moreover, allowing the larger C Block winners to continue to receive preferences in the remaining PCS auctions increases government debt to highly-leveraged "smalls" that will owe such large sums to the public that the results of default will be material.

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<sup>9</sup>. Comments of Sprint Corporation at 4.

<sup>10</sup>. Comments of PersonalConnect Communications, L.L.C. at 3.

CIRI specifically proposed that bidders and their attributable investors<sup>11</sup> that win C Block licenses covering more than 2 percent of the national population — approximately 5.05 million pops — should not be offered preferences in the remaining broadband PCS auctions. Similarly, Airlink, L.L.C. proposed a 27 million pop limit on licenses that may be won in the F Block auction<sup>12</sup> and Rendall and Associates proposed a 5 million pop limit for entrepreneurial preferences.<sup>13</sup> CIRI urges the Commission to restrict future preferences for companies that utilized Federal assistance to purchase C Block spectrum covering more than 2 percent of the nation.

**B. Include Value of C Block Licenses in F Block Assets**

CIRI also urged the Commission to include the value of any licenses won in the C Block auction in the total assets calculation for admission to the F Block auction. By including the costs of C Block licenses in applicants' F Block assets calculations, the Commission will insure that smaller companies benefit from the set-aside F Block auction. Airlink, L.L.C. supported this provision, noting that a limited number of C Block

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<sup>11</sup>. CIRI urges the Commission to employ the definition of licensee used to implement the Commission's 40 MHz broadband PCS spectrum cap. See 47 C.F.R. § 24.229(c). This definition would extend the restriction to attributable investors in large C Block winners and limit their ability to access government benefits through multiple "small" businesses.

<sup>12</sup>. Comments of Airlink, L.L.C. at 4-7.

<sup>13</sup>. Comments of Rendall and Associates at 7.

bidders effectively have outgrown the entrepreneurs' blocks by virtue of their C Block purchases.<sup>14</sup>

Commenters such as NextWave Telecom, Inc. and Omnipoint Corporation, however, argued that all C Block bidders should automatically be eligible for the F Block auction.<sup>15</sup> In particular, NextWave argued that the Commission historically has linked the C and F Blocks and that the Commission's Rules otherwise permit C Block licensees to acquire entrepreneurs' block licenses without jeopardizing their ongoing entrepreneurial status.<sup>16</sup> What NextWave ignored, however, is that the Commission instituted its entrepreneurs' blocks eligibility rules because "small entities stand little chance of acquiring licenses in these broadband auctions if required to bid against existing large companies."<sup>17</sup> While NextWave might have begun the C Block auction as a small start-up company, its considerable buying-power makes clear that it has outgrown the entrepreneurs' blocks. NextWave is utilizing the set-aside C Block to purchase substantial assets; the purpose of the set-aside F Block will not be served if NextWave is permitted to bid there without regard to those assets.

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<sup>14</sup>. Comments of Airlink, L.L.C. at 10-11.

<sup>15</sup>. Comments of NextWave Telecom, Inc. at 3-5; Omnipoint Corporation at 5-6.

<sup>16</sup>. Comments of NextWave Telecom, Inc. at 4-5.

<sup>17</sup>. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5585 (1994).

### **III. RETAINING THE CELLULAR-PCS CROSS-OWNERSHIP RULE**

CIRI also urged the Commission to retain its cellular-PCS cross-ownership rule if possible, and a number of commenters agreed.<sup>18</sup> In particular, DCR Communications noted that cellular licensees obtained their 25 MHz cellular spectrum without charge and can add to their existing systems at a much lower cost than it takes to construct a new wireless network.<sup>19</sup> Notwithstanding the arguments of some cellular providers that eliminating the cross-ownership rule is appropriate,<sup>20</sup> the cross-ownership limitation will help growing companies to enter the industry and will foster new service offerings for consumers. By retaining the cross-ownership rule — and by expanded measures for true entrepreneurial businesses — the Commission will increase its ability to disseminate licenses among a wide variety of applicants.

### **IV. EXAMINING MINORITY PREFERENCES**

Finally, in its comments CIRI reviewed the strict scrutiny analysis to be applied to the Commission's minority preferences under Adarand Constructors v. Pena, 115 S.Ct. 2097 (1995), and the state of the record before the Commission in support of those

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<sup>18</sup>. See, e.g., Comments of DCR Communications, Inc. at 12-15; Mountain Solutions at 11; North Coast Mobile Communications, Inc. at 16; Rendall and Associates at 12; Sprint Corporation at 9; and Telephone Electronic Corporations at 14.

<sup>19</sup>. Comments of DCR Communications, Inc. at 13.

<sup>20</sup>. See, e.g., Comments of AT&T Wireless Services, Inc. at 9; Cellular Communications of Puerto Rico, Inc. at 5; Cellular Telecommunications Industry Association at 2, 5-11; and GTE Service Corporation at 6-10.



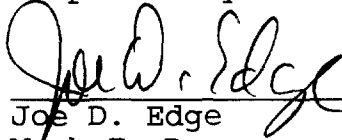
preferences. CIRI acknowledged the difficult judgments facing the Commission in this regard, but urged the Commission to retain its minority preferences if possible under the heightened standard. Few other commenters unequivocally supported proceeding with race-based measures.

In the final analysis, the ultimate goal of the Commission's minority preference regime might be served by extending the preferences for entrepreneurial companies to the D, E, and F Blocks, and by limiting eligibility for those preferences as described here. CIRI urges the Commission to review its records on minority preferences and the participation of small, minority-owned businesses in each of the Commission's auctions to see if this is the case. The Commission has crafted an innovative minority preference scheme that should be given a chance to succeed. A realistic assessment of the record before the Commission, however, could mitigate in favor of a more narrow, but effective, preference regime.

V. CONCLUSION

For these reasons, CIRI urges the Commission to adopt measures to increase opportunities for responsible small bidders in the remaining auctions, to restrict preferences for large C Block auction winners, to retain its cellular-PCS cross-ownership rule, and to examine its entrepreneurs' block minority preference provisions.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Joe D. Edge", is written over a horizontal line.

Joe D. Edge  
Mark F. Dever

DRINKER BIDDLE & REATH  
901 Fifteenth Street, NW  
Suite 900  
Washington, DC 20005  
(202) 842-8800

Attorneys for  
COOK INLET REGION, INC.

April 25, 1996

## CERTIFICATE OF SERVICE

I, Catherine S. Brewer, hereby certify that a true and correct copy of the foregoing Reply Comments of Cook Inlet Region, Inc. was served this 25th day of April, 1996, via first class mail, postage prepaid, on the following:

David Cosson  
L. Marie Guillory  
NATIONAL TELEPHONE  
COOPERATIVE ASSOCIATION  
2626 Pennsylvania Avenue, NW  
Washington, DC 20037

Cathleen A. Massey  
AT&T WIRELESS SERVICES, INC.  
1150 Connecticut Avenue, N.W.  
4th Floor  
Washington, DC 20036

Mark J. Tauber  
Mark J. O'Connor  
PIPER & MARBURY L.L.P.  
1200 19th Street, N.W.  
Washington, DC 20036

Ashton R. Hardy  
HARDY AND CAREY, L.L.P.  
111 Veterans Boulevard  
Suite 255  
Metairie, LA 70005

Janice Obuchowski  
HALPRIN, TEMPLE,  
GOODMAN & SUGRUE  
1100 New York Avenue  
Suite 650 East  
Washington, DC 20005

Andre J. Lachance  
GTE SERVICE CORPORATION  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036

George Y. Wheeler  
KOTEEN & NAFTALIN  
1150 Connecticut Avenue, N.W.  
Washington, DC 20036

Jay L. Birnbaum  
David H. Pawlik  
SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM  
1440 New York Avenue, N.W.  
Washington, DC 20005

Jeffrey S. Bork  
U S WEST, INC.  
1020 19th Street, N.W.  
Suite 700  
Washington, DC 20036

Michael F. Altschul  
Randall S. Coleman  
Andrea D. Williams  
CELLULAR TELECOMMUNICATIONS  
INDUSTRY ASSOCIATION  
1250 Connecticut Ave., NW, Suite 200  
Washington, DC 20036

William R. Richardson, Jr.  
Lynn R. Charytan  
WILLIAM, CUTLER & PICKERING  
2445 M Street, N.W.  
Washington, DC 20037

R. H. Moore  
U.S. INTELCO WIRELESS  
COMMUNICATIONS, INC.  
P. O. Box 8  
Olympia, WA 98507

Leonard J. Kennedy  
Richard S. Denning  
DEVON MOBILE  
COMMUNICATIONS, L.P.  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, DC 20036

Jay C. Keithley  
Nancy R. McCabe  
SPRINT CORPORATION  
1850 M Street, N.W.  
Suite 1100  
Washington, DC 20036

Tom A. Alberg  
PERSONALCONNECT  
COMMUNICATIONS, L.L.C.  
2300 Carillion Point  
Kirkland, WA 98033

Steven A. Zecola  
GO COMMUNICATIONS  
CORPORATION  
201 N. Union St., Suite 410  
Alexandria, VA 22314

David S. Rendall  
RENDALL AND ASSOCIATES  
5000 Falls of Neuse Road  
Raleigh, NC 27609

Shelley Spencer  
AIRLINK, L.L.C.  
3000 K Street, N.W.  
Suite 300  
Washington, DC 20007

Gerald S. McGowan  
Terry J. Romine  
LUKAS MCGOWAN NACE &  
GUTIERREZ, CHARTERED  
1111 19th Street, N.W., Suite 1200  
Washington, DC 20036

James U. Troup  
L. Charles Keller  
ARTER & HADDEN  
1801 K Street, N.W., Suite 400K  
Washington, DC 20006

Mark J. Golden  
Robert R. Cohen  
PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314

R. Michael Senkowski  
Katherine M. Holden  
Eric W. DeSilva  
WILEY, REIN & FIELDING  
1776 K Street, N.W.  
Washington, DC 20006

James F. Ireland  
Theresa A. Zeterberg  
COLE, RAYWID & BRAVERMAN, LLP  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, DC 20554

David J. Kaufman  
Lorretta K. Tobin  
BROWN NIETERT &  
KAUFMAN, CHARTERED  
1920 N Street, N.W., Suite 660  
Washington, DC 20036

Thomas E. Taylor  
Douglas E. Hart  
FROST & JACOBS  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202

Lawrence R. Sidman  
VERNER, LIIPFERT, BERNHARD,  
MCPHERSON AND HAND,  
CHARTERED  
901 15th Street, N.W., Suite 700  
Washington, DC 20005

Carressa D. Bennet  
Michael R. Bennet  
BENNET & BENNET, PLLC  
1831 Ontario Place, N.W., Suite 200  
Washington, DC 20009

Henry A. Solomon  
Melodie A. Virtue  
HALEY BADER & POTTS P.L.C.  
4350 North Fairfax Drive, Suite 900  
Arlington, VA 22203

Charles H. Carrathers III  
HUNTON & WILLIAMS  
951 East Byrd Street  
Richmond, VA 23219

  
Catherine S. Brewer